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SANIBEL-CAPTIVA
CONSERVATION FOUNDATION



CONSERVANCY
of Southwest Florida
OUR WATER, LAND, WILDLIFE, FUTURE.

WORKING *together* TO PROTECT OUR COASTAL WATERS

May 16, 2022

Lee County Hearing Examiner

sent via email

On behalf of the Sanibel-Captiva Conservation Foundation and the Conservancy of Southwest Florida, we are providing comments on the proposed settlement agreement (SA) and development agreement (DA) for the Old Corkscrew Mine property being considered by Lee County. We strongly urge you to find that this agreement as presented does not protect or act in the public interest of Lee County. Adding 2,474 acres to the mine site for development along with entitling 10,000 dwelling units in the environmentally sensitive Density Reduction/Groundwater Resource (DRGR) area will add unnecessary development pressure and be detrimental to the public and Lee County.

Background

In 2019, a mining application for Old Corkscrew Plantation was denied by the Lee County Board of County Commissioners (BOCC) based on the recommendation of the hearing examiner. This mine was to be located in eastern Lee County, almost at the county line. The proposal was to mine 4,202 acres for limerock.

The denied mine would have been located in the DRGR area of Lee County. This means that while the applicant was able to ask for the additional entitlement of limerock mining, mining is not a right in the DRGR for any land. Existing entitlements on the land include agriculture and residential development at 1 dwelling unit (du) per 10 acres.

When Corkscrew Grove Limited Partnership (CGLP) bought the property in 2016, they knew or should have known that getting approval for a mining operation was not guaranteed and was, in fact, speculative development because they had to apply for permission to mine. Mining is not a right inherent with the land. Our organizations supported Lee County in their denial of the mine based on negative environmental impacts and inconsistency with the Lee Plan. This speculative mining application should not trigger a Bert Harris Act settlement, however, Lee County finds itself evaluating a SA and DA pursuant to the Bert Harris Act.

Settlement Agreement & Development Agreement

In reviewing the proposed settlement agreement through the lens of whether it is in the public interest, we are shocked that the settlement agreement is 40% larger than the mine site. The

application for a 4,202 acre mine has ballooned to 6,676 acres, an increase of 2,474 acres. Please note that these 2,474 acres have not, to our knowledge, been part of any application made to Lee County in any capacity. When asked directly about the increase in size, we were told that Lee County is permitted under the Bert Harris Act to increase the project boundaries. However, as the Hearing Examiner, we ask that you evaluate this addition of acreage with regard to whether including this additional property is in the public interest.

While we would express concern about a Bert Harris Act settlement for the 4,202 acres that had a mining application denied, we are extremely concerned about allowing a settlement for a mining application to practically double in size and cross a major road. As such, we believe it is important to evaluate how the community's access to public hearings differs between a Bert Harris settlement and a regularly processed Comprehensive Plan Amendment (CPA).

Lee County staff has stated the number of public hearings is practically the same. This does not appear to be entirely accurate. A CPA would be required for these changes if done through the normal process and not as part of a Bert Harris settlement, along with a Planned Development (PD) application. A CPA requires a neighborhood meeting, a hearing with the Local Planning Agency (LPA), and two hearings with the Board of County Commissioners (BOCC). At each of these meetings, the substance of the development, from the density and uses, to the amount and timing of the conservation easements would be presented and available on the website for the public to review. As of May 12, 2022, there is no application package associated with the changes proposed in the settlement that is available for the public to view or access on the Lee County website.

On page 15 of the joint memo background materials, Lee County states:

Public input into the Agreement is provided through four public hearings, one before the Hearing Examiner, two before the BOCC and one before the circuit court. Based on the foregoing, the public interest served by the rezoning requirement has been fully protected by the Agreement.

However, for a PD going through a normal public hearing process, there would be a HEX proceeding and a BOCC meeting. At the HEX, the details of the development would be at issue including setbacks, schedule of uses, and traffic. The agenda packet would include all the site plans and be available for the public at least a week in advance. If a PD also requires a CPA, the BOCC hearing for the PD is often combined with the second required BOCC hearing for the CPA. However, even under those circumstances, there would be at least 5 separate public meetings, and the public would have access to the materials about the substance of this huge development on Lee County's website.

In this case, the materials are not available online. In this case, the HEX proceeding is not to discuss the details of the development but rather whether this development is in the public interest of Lee County residents. The two BOCC meetings will be to discuss the same topic – at no time will the public ever be meaningful engaged with the substance of the development before the entitlements are committed to through entering into the settlement. In addition, to

characterize a hearing at the circuit court as a meeting that would allow for meaningful public input to the extent it can be considered a public hearing like Lee County or a developer would hold is incorrect.

In addition, we would like to highlight other statements in the memorandum that we are concerned are misleading or incorrect.

Page 7 states:

While the density will exceed the maximum standard density of 1 du/10 acres, the Agreement proposes to utilize the density adjustments permitted under Objective 33.2.

The density adjustments under Objective 33.2 allow up to 1 du/acre under specific conditions. This land does not meet the conditions for 1 du/acre, and even if it did, 1.5 du/acre exceeds 1 du/acre. Thus, the agreement is not utilizing density adjustments permitted under Objective 33.2 but rather offers a higher density for the entire 6,676 acres.

Page 7 continues:

While the base density in the Wetlands classification may be exceeded, the density adjustments provided under Objective 33.2 through the EEPCO is being applied which allows density to be calculated at a higher rate on the entire property in exchange for environmental enhancements.

As discussed above, the density adjustments are being exceeded and the EEPCO density adjustments up to 1 du/acre are in return for environmental enhancements on specific properties. To exceed the density of wetlands under this justification is misleading, as it was never contemplated that the EEPCO density adjustments would be applied to wetlands in an attempt to urbanize eastern Lee County.

Page 17 of the memo claims to discuss the higher density. Other than stating public services will be provided, there is no reason given or discussion of how this higher density is in the public's best interest. There is only the following incomplete sentence:

While the density of the proposed development is greater than what would typically be allowed.

We are interested in the sentence that is supposed to follow this clause.

The SA is misleading in several ways.

Under Recitals:

1. Paragraph 1 – if CGLP had done their due diligence, they would have known that mining is not guaranteed as of right and that planning to mine the property was not guaranteed but would be considered speculative development.
2. The SA does not identify the mining application size of 4,202 acres.
3. The SA mentions additional property owned but does not state that this additional property is an addition of 2,474 acres, much of it across a main road – Corkscrew Road.

4. The SA provides no reason or justification for increasing the settlement size by 40%.
5. Paragraph 5 does not explicitly note that while mining can be an approved use, it is not a use as of right. This means that in order to mine, the applicant knew or should have known that additional approvals would be required and that those approvals are not guaranteed. This makes reliance on being able to mine speculative development.

Conclusion

In conclusion, our organizations have spent decades working with Lee County, landowners and the community to find environmentally compatible solutions for balancing growth, agriculture, mining and conservation in the DRGR. After careful evaluation of the proposed settlement agreement, we do not believe that expanding the size of development from 4,202 acres to 6,676 acres is consistent with the Bert Harris act. We also do not believe that allowing up to 10,000 dwelling units, approving 700,000 sq ft of non-residential and 240 hotel is in the best interest of the people of Lee County; in fact, these additional entitlements, particularly on the additional 2,474 acres outside the Bert Harris Act, in the environmentally sensitive DRGR area will put unnecessary development pressure on the area and will be detrimental to the public.

We respectfully request that you advise the BOCC that this settlement agreement does not serve the public interest for Lee County, and that any settlement agreement due to the Old Corkscrew Plantation mining denial should be for the 4,202 acres at issue in that application.

Sincerely,

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